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**IN THE**
**SUPREME COURT OF THE UNITED STATES**
**OCTOBER TERM, 1998**

PATRICK KNOWLES,

*Petitioner,*

v.

The STATE OF IOWA

*Respondent.*

**On Write of Certiorari to the**
**Supreme Court**
**of the State of Iowa**

# BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC. IN SUPPORT OF RESPONDENT

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## STATEMENT OF INTEREST OF THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS

*Amicus Curiae*, the National Association of Police Organizations, Inc. (hereafter "NAPO"), submits this brief in this case in support of the Respondent, the State of Iowa, for the affirmance of the judgment of the Iowa Supreme Court, which affirmed the trial court's refusal to suppress physical evidence seized from the Petitioner's automobile.[1]

NAPO is a national non-profit organization representing state and local law enforcement officers. Specifically, NAPO is a coalition of police associations and unions from across the United States that serves to advance the interests and legal rights of law enforcement officers through legal advocacy and education. NAPO represents 4,000 law enforcement organizations, with over 220,000 sworn law enforcement officers (including police officers, deputy sheriffs, state troopers, highway patrol officers, and traffic enforcement personnel), 3,000 retired officers, and more than 100,000 citizens who are dedicated to fair and effective crime control and law enforcement. NAPO's affiliate, the National Law Enforcement Officers' Rights Center, advocates the fundamental due process and workplace safety rights for law enforcement officers. NAPO has previously filed *amicus curiae* briefs in the United States Supreme Court and state appellate courts, on behalf of law enforcement officers.

NAPO and its members have a significant interest in the important issue of law before this Court. The Iowa State Police Association is a member of NAPO with approximately 3,000 state

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[1]Pursuant to Supreme Court Rule 37.6, no counsel for any party in this case authored this *amicus curiae* brief in whole or in part, and no person or entity, other than the *amicus curiae* and its members, made a monetary contribution to the preparation or submission of the brief.

police officer members, whose safety during traffic stops will be directly impacted by the outcome of the Court's decision. In addition, NAPO is interested in the impact that this case will have on law enforcement officers throughout the United States. This case will help to define the extent to which law enforcement officers may protect themselves and the public by conducting a search for weapons, whenever they stop a motor vehicle for a traffic or other violation and issue a citation in lieu of making an arrest. Stopping a motor vehicle constitutes one of the least predictable and potentially most dangerous duties of a law enforcement officer. Each traffic stop presents a situation where an officer, usually alone and without any other officer support, must confront unknown individuals, who may be hiding weapons or concealing evidence anywhere on themselves or in the passenger compartment of the stopped vehicle.

In summary, as one of the country's largest police advocacy organizations, NAPO is vitally concerned with the safety of law enforcement officers throughout the Nation. NAPO seeks to provide the Court with the perspective of the police profession, a meaningful insight into the serious danger inherent in routine traffic stops, and arguments and facts that support the substantial need for police officers to be able to conduct searches incident to the issuance of a traffic citation, in lieu of an actual arrest, to protect against that danger.

## WRITTEN CONSENT OF THE PARTIES

NAPO has received the written consent of the Petitioner Patrick Knowles (through his attorney) and the Respondent State of Iowa (through the Office of the Attorney General), pursuant to Supreme Court Rule 37.3(a), to file this brief. The original copies of these letters of consent have been filed with the Clerk of the Court, as required by the rule.



## STATEMENT OF THE CASE

On March 9, 1996, Officer Ronald Cook of the Newton, Iowa, Police Department observed Petitioner Patrick Knowles driving his vehicle at an excessive rate of speed. Officer Cook signaled Knowles to pull over and detained him. The officer checked the Petitioner's driver license and determined that there were no warrants for his arrest. The officer then decided to issue Knowles a speeding citation and conducted a search of both Knowles and the passenger compartment of his vehicle. During that search, the officer found a pipe and some marijuana under the driver's seat. The office arrested Knowles, and the State charged him with possession of marijuana and keeping marijuana in his vehicle, for which he subsequently was convicted.

Knowles moved to suppress the admissibility of the evidence seized from his vehicle, on the ground that the search violated the Fourth Amendment of the United States Constitution. Based on the testimony of the officer during the suppression hearing, it is undisputed that:

(1) Officer Cook stopped Knowles for excessive speeding, an offense for which Knowles was subject to arrest;
(2) Officer Cook had probable cause for the stop, based on the defendant's excessive speed, but had no probable cause or suspicion to believe that Knowles was involved in any other criminal activity; and
(3) Knowles did not consent to the search of his vehicle.

The officer testified that he issued a citation and conducted a search incident to the citation, pursuant to Iowa Code 805.1.

Iowa Code 805.1 "Issuance of Citation - Release":

> 1. Except for an offense for which an accused would not be eligible for bail . . . , a peace officer having grounds to make an arrest may issue

a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

* * * * * *

4. The issuance of a citation in lieu of an arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements . .

The trial court rejected Knowles' motion to suppress the evidence found in his vehicle. Subsequently, Knowles appealed to the Iowa Supreme Court, which upheld his conviction, citing its recent decision in *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), upholding the constitutionality of the provisions at issue. *State v. Knowles*, 569 N.W.2d 601 (Iowa 1997). The court stated:

> We are satisfied that our decision in *Doran* properly identified the public policy reasons that support the "search incident to an arrest" exception when grounds for a legal arrest are present. When an officer has a legal basis to make a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety. Based on those considerations, the legislature's grant of authority to search provided in section 805.1(4) does not offend against the Fourth Amendment.

*Id.* at 602-03.



## SUMMARY OF THE ARGUMENT

Under the Fourth Amendment, reasonableness of a stop and search of a vehicle and its driver during a routine traffic stop rests on the balance between an individual's right of privacy and the public's significant interest in the safety of its law enforcement officers.

Traffic stops are inherently dangerous and risky and pose a significant threat to the physical safety of law enforcement officers. It is not uncommon for routine traffic stops to escalate into a violent situation. In fact, thousands of officers have been assaulted, and at least 300 officers have been feloniously killed by drivers or other occupants of vehicles involved in traffic stops or pursuits. Iowa Code §805.1(4), which allows for lawful searches incident to a citation if a citation is issued in lieu of an arrest, is a legitimate and reasonable effort by the State of Iowa to reduce this danger to police officers during traffic stops in a less intrusive manner than a full custodial arrest.

Court precedent authorizes searches of persons and vehicles incident to an arrest based on probable cause, even before an actual arrest occurs. The purpose of such searches is to discover weapons (in order to disarm the driver) and to preserve evidence (to prevent its destruction). The application of Iowa Code §805.1(4) recognizes that once a law enforcement officer stops and briefly detains occupants of a vehicle, based on probable cause that a traffic violation has occurred, the officer is exposed to a potentially dangerous situation. The statute is also based on the realization that this danger exists at the onset of the stop and detention, regardless of whether the officer eventually decides to make a formal arrest or issue a citation in lieu of an arrest.

Therefore, where probable cause to arrest exists, the ultimate charging decision made by the police officer should not

determine the validity of an otherwise lawful search. Limiting searches during routine traffic stops to only when there is an eventual arrest would significantly increase the risk of harm to law enforcement officers in Iowa, who decide to issue a citation in lieu of an arrest. In view of the rationale underpinning this Court's past decisions concerning the constitutionality of vehicular searches, the distinction between a search incident to an arrest and a search incident to a citation in lieu of an arrest is meaningless in the context of officer exposure to significant danger of injury or death.

Accordingly, searches incident to a citation in lieu of an arrest, conducted pursuant to Iowa Code §805.1(4), advance a significant public interest in protecting officer safety and are reasonable under the Fourth Amendment. Thus, any weapon seized or evidence of crime uncovered during such searches is properly admissible in a criminal case, as was the evidence of criminality discovered in the Petitioner's vehicle in this case.

Furthermore, issuing a traffic citation in lieu of making an arrest is significantly less intrusive. A requirement that an actual arrest must occur before a search for weapons or concealed evidence can take place would deter law enforcement officers from proceeding in this less intrusive manner. The Iowa statute follows a more reasonable approach by giving officers needed flexibility, and thus benefits the citizens of Iowa.



## ARGUMENT

### I. REASONABLENESS OF A SEARCH OF A VEHICLE AND ITS DRIVER UNDER THE FOURTH AMENDMENT DEPENDS ON A BALANCE BETWEEN THE INDIVIDUAL'S RIGHT OF PRIVACY AND THE PUBLIC'S INTEREST IN THE SAFETY OF LAW ENFORCEMENT OFFICERS. TRAFFIC STOPS ARE DANGEROUS ENCOUNTERS WHICH POSE A SIGNIFICANT RISK OF ASSAULT AND SOMETIMES DEATH TO LAW ENFORCEMENT OFFICERS. THEREFORE, THE PUBLIC INTEREST WEIGHS HEAVILY ON THE SIDE OF ALLOWING OFFICERS TO CONDUCT A BRIEF SEARCH FOR WEAPONS ON THE DRIVER AND WITHIN THE PASSENGER COMPARTMENT OF THE VEHICLE, AS A SEARCH INCIDENT TO A CITATION IN LIEU OF AN ARREST.

This Court has recognized that law enforcement officer safety during a vehicle stop is the crucial "public interest" factor in analyzing the reasonableness of searches and seizures of vehicles and their occupants under the Fourth Amendment. *Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882 (1997). In citing statistics on the number of officer assaults and deaths arising during traffic pursuits and stops, the Court stated, "Regrettably, traffic stops may be dangerous encounters." *Id.* at 885. Referring to *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977) (and cases cited therein), *Wilson* set forth the analysis required in public officer safety situations, as follows:

> We reversed [in *Mimms*], explaining that "[t]he touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all circumstances of the particular governmental invasion of a citizen's personal security,' "

[citations omitted], and that reasonableness "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers,' " [citations omitted]. On the public interest side of the balance, we noted that the State "freely concede[d]" that there had been nothing unusual or suspicious to justify ordering Mimms out of the car, but that it was the officer's "practice to order all drivers [stopped in traffic stops] out of their vehicles as a matter of course" as a "precautionary measure" to protect the officer's safety. [Citations omitted.] We thought it "too plain for argument" that this justification--officer safety--was "both legitimate and weighty." [Citations omitted.] In addition, we observed that the danger to the officer of standing by the driver's door and in the path of oncoming traffic might also be "appreciable." [Citations omitted.]

*Wilson*, 117 S.Ct. at 884-885 (quoting from *Pennsylvania v. Mimms*, 434 U.S. at 108-111).

The reasoning on which *Maryland v. Wilson* was predicated applies equally to searches of drivers and the passenger compartments of their vehicles, whenever there is probable cause for an arrest and a detention of a vehicle.

Patrolling the Nation's highways and streets is one of the more important duties of state and local law enforcement officers and is a routine part of most officers' work. And, in recent years, public demand for such enforcement has increased due to the rise of aggressive driving and "road rage." Today, traffic stops are one of the riskiest tasks for law enforcement officers and pose a significant threat to their physical safety.



The statistics on the numbers of officers killed feloniously or assaulted in the line of duty while performing traffic stops confirm this danger. Since the advent of the automobile, approximately 300 law enforcement officers are known to have died during traffic stops, and approximately 80 percent of those (or 240) were shot to death.[2] More recently, during the years 1977 through 1986, 61 law enforcement officers were feloniously killed (usually shot) in the line of duty while conducting traffic stops/pursuits.[3] From 1987 through 1996, there were 90 law enforcement officers feloniously killed during traffic stops and pursuits.[4] For the same ten year period ending in 1996, there were ***4,333*** law enforcement officers assaulted through use of weapons during traffic stops and pursuits.[5] In 1997 alone, eleven of the 159 officers who died were killed while conducting traffic stops.[6]

A recent FBI study describes the difficulty that officers

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[2]Craig W. Floyd, *For Law Enforcement Officers, Traffic Stops Are Fraught with Danger*, AMERICAN POLICE BEAT, Mar. 1998, at 36. (This article discusses a number of the more egregious episodes of violence against law enforcement officers during traffic stops.)

[3]National Law Enforcement Officers Memorial Fund, *Police Officers Killed Since 1977 During Traffic Stops, etc.*, July 11, 1996, (unpublished compilation of data). For 1997, the Memorial Fund has released data showing that, of the 159 law enforcement killed in the line of duty, 70 were shot to death (including but not limited to traffic stops), 40 died in automobile accidents, and 17 were struck by vehicles. Memorial Fund Press Release, *Dramatic Increase in Police Deaths During 1997*, December 30, 1997.

[4]FBI UNIFORM CRIME REPORTS, U.S. DEPARTMENT OF JUSTICE, *Law Enforcement Officers Killed and Assaulted in 1996*, at 27, <http://www.fbi.gov.ucr/killassl.htm>.

[5]*Id.* at 69.

[6] Floyd, *supra*, note 2, at 37.

face, when trying to discern whether the person in a vehicle they stop for a traffic violation is likely to assault them. While victim officers in the study had a "preconceived image" of the person most likely to assault, the study's data indicated that "[n]o singular profile exists of an individual who would assault, attempt to kill, or actually kill a police officer."[7] The officer's preconceptions of the likely assaulter profile were of "little value in securing their personal safety."[8] The study concluded, that "traffic stops--tasks frequently viewed as routine and repetitive--pose a potentially grave threat to officers. Few officers considered that someone they stopped for a minor infraction of law would consider taking their lives in an effort to escape."[9]

Statistics do not convey a full sense of the danger lurking when an officer stops a vehicle for a simple traffic infraction. Lists compiled on law enforcement memorial sites on the Internet illustrate many examples of the hundreds of officers who have lost their lives while conducting traffic stops. Although some of these deaths occurred when the officers were struck by oncoming traffic, an alarming number of officer deaths at traffic stops resulted from violence initiated by an occupant of the stopped vehicle. The following examples represent only a few of such cases.

The *1997 Roll of Honour* and the *1998 Roll of Honour* disclose a number of officer deaths occurring during traffic stops, three of which especially highlight these dangers:

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[7]Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, *In the Line of Fire: Learning from Assaults on Law Enforcement Officers*, FBI LAW ENFORCEMENT BULLETIN, U.S. DEPARTMENT OF JUSTICE, Feb. 1998, at 17.

[8]*Id.* at 21-22.

[9]*Id.*



--Mark Stall, Officer, Boise (ID) Police Department, killed on 9/20/97; he had requested assistance after stopping a vehicle and the occupants had failed to co-operate with him. The occupants eventually left the vehicle and opened fire on the officers at the scene. Officer Stall left a wife and two small children.

--Jeremy Charron, Officer, Epsom (NH) Police Department, killed on 8/24/97. He stopped a suspicious vehicle at 5 a.m.; when he did not respond to a routine 'well-being' radio call, other units were dispatched to his location and found him shot but still alive near his cruiser, clutching the registration slip of the vehicle he had stopped. The shooters were eventually arrested, after a subsequent armed robbery.

--Kyle Dinkeller, Deputy Sheriff, Laurens County (GA), killed on 1/12/98. He was shot after he made a traffic stop of a speeding vehicle, the bullets penetrating his body armor. The shooter was a militia/survivalist member; the victim left a wife and a 18 month old child.[10]

Listed below are three of the Florida Highway Patrol Troopers killed during traffic stops, not atypical of the deadly outcome of traffic stops in other states, as well as Florida:

--Frederick J. Groves, Florida Highway

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[10]Jim McNulty, *1997 Roll of Honour* and *1998 Roll of Honour*, (last visited June 8, 1998) <http://www.ukexpert.co.uk/roll/roll96.htm>. This list is maintained by a retired police officer in Scotland. While the list is comprised almost entirely of Federal and State law enforcement officers in the United States, there are a few foreign officers listed, primarily from Europe and Japan. The 1997 list contains 161 peace officers who lost their lives while on duty.

Patrol Trooper; killed on 9/18/84 in Palm Beach County. He was shot during a routine traffic stop on a turnpike. The vehicle was loaded with marijuana and four subjects were subsequently apprehended.

--Jeffrey D. Young, Florida Highway Patrol Trooper, killed on 8/18/87 in Manatee; shot following altercation during a routine traffic stop.

--Bradley S. Glascock, Florida Highway Patrol Trooper, killed on 8/4/77 in Miami; shot during a routine traffic stop [of a person] for not paying a ten cent toll.[11]

*Amicus curiae* NAPO is not suggesting that all or most of these deaths could have been prevented if the officer victims had conducted a search incident to the issuance of a traffic citation. For example, some of the officers named in these reports and lists were accidentally killed by drunk or reckless drivers as the officers approached a stopped vehicle. It is also possible that the extent of violence towards officers during traffic stops may be understated in these sources, due to incomplete data on the circumstances surrounding the deaths of these officers. There is no way to know how many of these deaths or assaults could have been prevented, due to the paucity of information.

The crucial point is that a considerable number of police officer deaths and many more assaults can be prevented, if an officer is able to order the driver out of the vehicle, conduct a quick pat-down search for weapons, and then search the car for weapons, pursuant to a search incident to either an arrest or a

[11]State of Florida Highway Patrol, *Florida Troopers Killed in the Line of Duty*, (last visited June 3, 1998) <http:// www.fhp.state.fl.us>.



citation in lieu of an arrest, as allowed in Iowa.[12]

The deaths of these and other officers during traffic stops, and the assaults of thousands of other officers who were injured but not killed, should give pause to those who would minimize the public interest in protecting law enforcement officers and overstate the degree of intrusion that occurs when an officer searches a driver for weapons or evidence during a lawful stop of a vehicle.

Petitioner asserts that traffic stops are different from arrests because they present little or no danger to police officers, due to the officer's shorter period of exposure to the traffic offender. According to the Petitioner, "The motorist would be less likely to use violence against the officer if he knows he will be on his way once the citation is issued." (Petitioner's Brief, at 11-12.) But there is no empirical or other evidence in the record to support this proposition.

*Amicus Curiae* urges the Court to recognize that it is *not* the length of the stop which determines the likelihood of officer assault or death. Instead, a driver's recent or current criminal conduct, propensity to commit violence on others, or desire to escape is more indicative of whether a routine traffic stop will escalate into violence. Yet, such factors are usually unknown to the officer at the time of the stop.[13] There are numerous cases, included in the anecdotal evidence and in the statistics referenced above, where an officer stopped a vehicle for a traffic offense, not knowing that the driver was committing or had recently committed

[12]In a number of states, an officer cannot arrest an individual for a traffic infraction, for example, because it is handled civilly or as a lower class of misdemeanors with no right to arrest. Those state statutes, however, are not relevant to the instant case.

[13]*See, e.g.*, C. Floyd, *supra*, note 2, for several examples which illustrate this point.

a felony and was prone to violence. *Any* exposure during the process of conducting a license/registration check and writing a citation subjects the officer in such situations to a significant danger of injury or death.

For instance, assume *arguendo* that a person is driving a stolen vehicle, is the subject of an arrest warrant, or has recently committed a serious felony. If a police officer stops this driver for a traffic violation and runs license, registration, and warrant checks, the driver has ample opportunity and may well seek to harm the officer, without waiting until a formal arrest has been effected. The brief period necessary for the officer to stop the vehicle and to conduct these checks provides ample time for a driver to assault or even kill the officer. There are numerous examples that illustrate the frequency with which deadly violence does occur. For example, on May 6, 1995, a New Jersey police officer was shot twice in the head and neck, as he was simply examining a driver's license. He died nine hours later.[14]

Reasonable efforts by state governments to reduce such violence against law enforcement officers should be upheld. Iowa Code §805.1(4), allowing for searches if a citation is issued in lieu of an arrest, is a reasonable effort to balance the public interest of reducing the danger to law enforcement officers during traffic stops cases and motorists' right to privacy. Simultaneously, it makes available to officers the less intrusive tool of issuing a citation in lieu of a custodial arrest. Therefore, this code provision embodies the public interest in protecting law enforcement officers, as recognized by the State of Iowa. This Court should thus be reluctant to hold unconstitutional the reasonable application of this statute, given the weighty interest in officer safety.

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[14] *Id.*



**II. IOWA CODE SECTION 805.1.4 ESTABLISHES AN IMPORTANT PUBLIC POLICY. FIRST, IT RECOGNIZES THAT THE DANGER OF VIOLENCE TO A LAW ENFORCEMENT OFFICER DURING A LAWFUL TRAFFIC STOP AND DETENTION CONTINUES IRRESPECTIVE OF WHETHER THE DRIVER IS EVENTUALLY ARRESTED OR GIVEN A CITATION INSTEAD. SECOND, THE STATUTE CONFERS ON AN OFFICER THE DISCRETION TO ISSUE A CITATION IN LIEU AN ARREST DURING TRAFFIC STOPS, WHICH IS LESS INTRUSIVE THAN AN ARREST. THEREFORE, WHENEVER THERE IS PROBABLE CAUSE TO ARREST FOR A TRAFFIC OR OTHER VIOLATION, A SEARCH OF THE DRIVER AND OF THE PASSENGER COMPARTMENT INCIDENT TO A CITATION IN LIEU OF AN ARREST IS REASONABLE UNDER THE FOURTH AMENDMENT.**

The Fourth Amendment of the U.S. Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A vehicular stop is therefore subject to the constitutional imperative that it not be "unreasonable" under the circumstances. The decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 1772 (1996).

The authority to search individuals and vehicles after a traffic stop must be examined in the larger context, beginning with the detention of the vehicle and the reasons for the traffic stop under the Fourth Amendment. As this Court stated in *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138 (1984):

> It must be acknowledged at the outset that

> a traffic stop significantly curtails the "freedom of action" of the driver and the passengers, if any, of the detained vehicle. Under the law of most states, it is a crime either to ignore a policeman's signal to stop one's car, or once having stopped, to drive away without permission. [Citation omitted.] . . Partly for these reasons, we have long acknowledged that "stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the Fourth] Amendment, even though the purpose of the stop is limited and the resulting detention quite brief." [Citation omitted.]

468 U.S. at 436-437.

**A. The purpose of searching the driver and the inside of the vehicle incident to an arrest is to discover weapons (to disarm the driver) and to preserve evidence (to prevent its destruction). These needs to search exist irrespective of whether the detention eventually results in an arrest or in the issuance of a citation in lieu of an arrest.**

Whenever a law enforcement officer lawfully detains a motorist for a violation of a traffic or other law, special dangers exist for the officer both before and after the arrest of the motorist. In order to protect themselves, law enforcement officers must be able to conduct searches of the driver and the immediate surrounding area. The rationale for such searches was set forth in the landmark Supreme Court case of *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034 (1969):

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might



> seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

395 U.S. at 762-763.

This Court has relied upon *Chimel* to authorize searches in connection with vehicular stops. Whenever there is probable cause to arrest an individual for a traffic violation, law enforcement officers may contemporaneously conduct a search of the individual incident to an arrest. *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467 (1973). Furthermore, the police may search a vehicle's passenger compartment, as a contemporaneous search incident to a lawful arrest of a vehicle's occupant. *Belton v. New York*, 453 U.S. 454, 460, 101 S.Ct. 2860 (1981).

In *Robinson*, the Court upheld a search of a defendant incident to an arrest for the offense of driving on a revoked driver's license. The Court refused to qualify the breadth of general authority to search incident to a lawful custodial arrest, rejecting the argument that individuals stopped for traffic offenses were less likely to possess dangerous weapons than those arrested for other crimes. *Robinson*, 414 U.S. at 234.

It is indisputable that arrests pose very dangerous situations, especially in comparison to the *Terry* stop-and-frisk situation. The Court stated in *Robinson*:

> It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into

> custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical Terry-type stop. This is an adequate basis for treating all custodial arrests alike for purposes of search justification.

*Id.* at 234-235. *Robinson* emphasized that an arrest situation is more dangerous than the shorter *Terry* situation, due to the "extended exposure" which occurs during the procedure of carrying out the arrest.[15]

The Court in *Robinson* did not have before it a search based on a detention arising out of a traffic stop and the issuance of a citation in lieu of an arrest.[16] Therefore, *Robinson* is not determinative of the reasonableness of a search based on a lesser exposure of time involved in an issuance of a citation instead of an arrest. Until the present case, this Court has not addressed the issue of whether the dangers faced by police officers during a traffic stop and detention, based on probable cause to arrest for a traffic offense, are sufficiently similar to those faced during an actual arrest.

Although the duration of a routine traffic stop is usually shorter than an arrest, the detention of a driver for a traffic or other offense need not be long to constitute a dangerous situation for the

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[15]In *Robinson*, the Court observed, first, that taking a suspect into custody and transporting the suspect to the police station contributes to this extended exposure and, second, that a search incident to an arrest is justified and reasonable because this prolonged period of time presents more danger to police officers. *Id.*

[16]It is important to recall that the focus of the Court in *Robinson* was the reasonableness of searches incidental to *all* custodial arrests, no matter what the offense or the probability that the driver was armed and dangerous.



police. During a traffic stop, a definite period of time for a license and registration check is required, as the officer radios for a check on that information, waits for a reply, and then decides whether to make an arrest or issue a citation. During this time, a dangerous suspect sitting in the vehicle does not know whether he or she will receive a traffic citation or will, instead, be arrested. The incentive to harm an officer is the same in both situations.

Although issuing a citation in Iowa may not involve taking the driver to the police station, as did the arrest in *Robinson*, very real and substantial dangers to police officers exist in both situations. Where a police officer has stopped and detained the driver, based on probable cause to arrest for a traffic offense, very little time is needed for the driver or an occupant of that vehicle to assault, injure, or kill a law enforcement officer. Therefore, the principle enunciated in *Robinson* can be applied to traffic stop situations where no arrest has yet occurred.

**B. The crucial element conferring upon law enforcement officers the right to conduct a search incident to such an arrest is probable cause to arrest for a traffic violation, not the actual arrest itself, which may occur after the search, and not the motivation of the officer making the traffic stop.**

Previously, in determining the lawfulness of a search incident to an arrest, this Court has focused on whether a police officer had probable cause to make the arrest. For example, in *United States v. Robinson*, this Court found that the officer had probable cause to arrest the defendant for operating a vehicle after the revocation of his operator's permit, and therefore the subsequent search of the defendant, revealing heroin capsules contained in a crumbled cigarette package, was constitutional.

Similarly, in the present case, Officer Cook had probable

cause to arrest Petitioner Knowles for violating a traffic law, after the officer observed Knowles speeding. Thus, the police officer was entitled to conduct a search incident to arrest. Although the officer here did not ultimately arrest the defendant, as was the case in *Robinson*, the officer's right to conduct an otherwise lawful search incident to arrest is not invalidated: The existence of the initial probable cause to arrest for the traffic violation alone justifies the search in this case. In other words, since the officer had probable cause to arrest Knowles, the mere fact that the officer ultimately issued a citation in lieu of an arrest does not render the search here unreasonable under the Fourth Amendment.

Once probable cause to arrest has been established, the authority to conduct a search incident to arrest has been consistently upheld, in order to secure the officer safety and prevent the destruction or concealment of evidence. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). Consequently, the timing of the actual arrest has not been considered to be significant, and the courts often have granted police officers considerable leeway in deciding upon the best procedure of arrest. In *Rawlings v. Kentucky*, 448 U.S. 98, 100 S.Ct. 2556 (1980), this Court noted that, where the police "clearly" had probable cause to place the petitioner under arrest, "we do not believe it particularly important that the search preceded the arrest rather than vice versa." *Id.* at 111. Likewise, in *Sibron v. New York*, 392 U.S. 40, 88 S. Ct. 1889 (1968), in a concurring opinion, Justice Harlan stated that once probable cause to arrest is established:

> There is no case in which the defendant may validly say, "Although the officer had a right to arrest me at the moment when he seized me . . . the search is invalid because he did not in fact arrest me until afterwards."

392 U.S. at 77.



In addition, for more than twenty-five years this Court has upheld the concept that the subjective thought process of individual police officers in conducting searches is irrelevant to situations where probable cause to arrest exists. In *Gustafson v. Florida*, 414 U.S. 260, 94 S.Ct. 488 (1973), this Court found that because an officer had probable cause to arrest the petitioner for the offense of driving without a valid operator's license, the officer was entitled to conduct a search incident to that arrest, notwithstanding the fact that the officer expressed no subjective fear of the petitioner nor believed that the petitioner was armed. 414 U.S. at 266. More recently in *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769 (1996), this Court reaffirmed this principle by refusing to judge the "constitutional reasonableness" of traffic stops based on motivations of individual police officers where the probable cause to arrest for a traffic violation was present. *Id.* at 1772-1774.

Where probable cause to arrest has been established, the authority to conduct a search incident to arrest no longer falls within the limited realm of a *Terry* "stop and frisk." "[T]here is a 'distinction in purpose, character, and extent between a search incident to arrest and a limited [*Terry*] search for weapons.'" *Robinson*, 414 U.S. at 227, quoting *Terry v. Ohio*, 392 U.S. 1, 25-26 (1968). *Terry* is therefore inapplicable to the instant case. As this Court stated in *Gustafson v. Florida*, 414 U.S. 260 (1973):

> Our decision in Robinson indicates that the limitations placed by *Terry v. Ohio*, *supra*, on protective searches conducted in an investigatory stop situation based on less than probable cause are not to be carried over to searches made incident to lawful custodial arrests.

*Id.* at 264.

Contrary to the Petitioner's contention that probable cause to arrest for a traffic violation does "not justify any type of search, including a *Terry* pat-down" (Petitioner's Brief at 11), the officer's detention and search in this case, taken together, was sufficiently similar in character to an arrest situation and was fully justified, in light of the probable cause to arrest Knowles for a traffic violation.

In summary, it is the probable cause to arrest, and not the timing of the arrest or subjective reasoning of the police officers, that is the crucial element determining the lawfulness of a search incident to arrest. Furthermore, the important needs to secure officer safety and to preserve evidence continues regardless of whether the existence of probable cause to arrest results in an actual arrest or issuance of a citation.

*Amicus Curiae* NAPO urges the Court to extend the rationale underpinning *Robinson*, *Rawlings*, *Sibron* (Justice Harlan's concurring opinion), and *Gustafson*, and to recognize that the ultimate charging decision made by a police officer should not affect the validity of a search incident to a citation in lieu of an arrest. *As long as probable cause to make an arrest initially exists*, it should not matter whether an arrest occurs after the search or whether a citation is ultimately issued in lieu of an arrest. Under such a circumstance, issuing a citation should not invalidate the authority to make an otherwise lawful arrest. Such a search is not unreasonable and therefore does not violate the Fourth Amendment.

**C. Issuance of traffic citations in lieu of making arrests for traffic offenses is significantly less intrusive than an arrest and therefore should be encouraged and not deterred by any requirement that an actual arrest must occur before an officer can conduct a search for weapons or concealment of evidence.**



Petitioner states in his brief that, as an alternative to the current Iowa statute and practice of authorizing issuance of a citation in lieu of an arrest, the State of Iowa "could simply arrest and search all traffic offenders." (Petitioner's Brief at 23). In other words, Knowles asserts that if Iowa has an interest in searching violators of traffic laws, then police officers should be required to make an actual arrest before being able to conduct a search.

If this Court accepts the Petitioner's argument and reverses the decision of the Iowa Supreme Court, then the effect would be to mandate that police officers actually arrest every traffic offender before they are able to conduct a search of the person and the passenger compartment of the vehicle. It would compel police in a rural state to either forego a protective search for weapons or transport the potential dangerous offender many miles to the nearest county jail. The likely result of a reversal of the Iowa Supreme Court's decision would be many more formal arrests and fewer citations, a definitely more intrusive policy than currently exists, which would tie up law enforcement resources for longer periods of time, as arrested drivers are transported to jails.[17]

Instead, Iowa's policy of conferring on law enforcement officers the discretion to issue a citation in lieu of an arrest, without taking away the officer's right and obligation to conduct a brief search of the person and the passenger compartment of the car for safety reasons, offers a more reasonable approach. Such an approach does not unnecessarily intrude upon motorists committing traffic offenses, but at the same time it furthers the weighty and important public interest in securing a safe

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[17]The *Amicus Curiae* brief of the American Civil Liberties Union, the Iowa Civil Liberties Union, and the National Association of Criminal Defense Lawyers concedes in their brief, at 20-21, that making arrests in lieu of citations for all or most traffic stops would be much more intrusive.

environment for police officers. The Iowa statute properly enables Iowa law enforcement officers to follow a less intrusive means than a formal arrest during routine traffic stops, thereby benefitting many Iowa residents who occasionally violate traffic codes.

## CONCLUSION

For the foregoing reasons, *amicus curiae* National Association of Police Organizations, Inc. urges the Court to apply the doctrine of searches incident to lawful arrests to lawful issuances of citations in lieu of arrests during traffic stops and detentions, given the substantial public interest in officer safety and the important rationale underpinning the Court's past cases concerning searches incident to an arrest.[18] Therefore, *amicus curiae* respectfully requests that the Court affirm the judgment in this case of the Supreme Court of the State of Iowa.

*Respectfully submitted this 24th day of June, 1998,*

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[18]We recognize that this serious danger is faced by all law enforcement officers making traffic stops, including those in many other states where officers, not having the flexibility of Iowa officers, can only issue a citation for a traffic offense and not make an arrest. However, the narrow issue before this Court is the constitutionality of searches of drivers and the passenger compartments of their vehicles as incident to the issuance of a citation in lieu of an arrest, pursuant to this Iowa statute.